

STATE OF MICHIGAN
COURT OF APPEALS

JOHN SWANBERG,

Plaintiff-Appellee,

v

ANGELA SWANBERG,

Defendant-Appellant.

UNPUBLISHED

May 17, 2016

No. 325768

Marquette Circuit Court

LC No. 13-051331-CK

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

John Swanberg asked the Marquette Circuit Court to intervene in a family feud and determine that funds he transferred to his niece, defendant Angela Swanberg, amounted to a loan that she was required to repay. Angela insisted that the funds were either a gift or were forced upon her by John and her father. The parties did not have a signed contract, but the court found that Angela understood the transaction to be a loan and that Angela would be unjustly enriched if permitted to retain the funds. Accordingly, the court ordered Angela to resume payments to her uncle consonant with her previous conduct. We affirm.

I. BACKGROUND

John Swanberg is a bachelor with no children who makes a good living as an engineer in the oil business. Over the years, he has transferred significant funds for the care and maintenance of his mother, his brother Scott, and Scott's three children: Craig, Caralee, and Angela. John's relations have repaid some of these transfers, but not others.

At issue in this case is a transfer of \$77,700 that John made to Angela in the spring of 2011. Angela used these funds to pay off a loan with TruNorth Credit Union. Angela had secured the loan in 2008 to consolidate various education loans. John cosigned for the loan and posted CDs he held with the credit union as collateral. In 2011, Angela's father acted as a middleman, as was his custom, in a transaction between Angela and John. John alleges that Angela initiated negotiations seeking to have John pay off her TruNorth loan so she could repay him at a lower interest rate. Angela contends that she did not want to be beholden to John, but that he and her father forced her into the transaction because John wanted to cash out his CDs. Angela insists that her father told her that this transfer was more in line with a gift ahead of her inheritance and that John would be grateful if she paid any amount back whenever she was able to do so.

Despite her pretransfer protestations, Angela accepted the funds and paid off her commercial loan. She then prepared a promissory note and forwarded to John an amortization schedule reciting a 3% interest rate. The promissory note provided that Angela would pay John \$1,000 monthly until the loan was repaid. The parties never signed this note, however. Angela proceeded to make monthly payments from April 2011 through June 2012, missing only one payment in April 2012. At one point, she sent John an email requesting permission to make her payment one week late.

In November 2011, Angela's relationship with her father soured. Angela fell out with her siblings as well. She came upon hard financial times as she moved out on her own and suddenly acquired new obligations for housing, transportation, and utilities. John admitted at trial that he did not expect Angela to make her monthly loan payments if she was not financially able. However, he began dunning Angela for payment in August 2012, two months after her last payment. At first, Angela asserted that she would secure another loan to repay him. She later waffled and decided not to repay him at all.

John filed suit, raising contractual and equitable claims. The court summarily dismissed the contractual claim as the promissory note was not signed by the parties, but determined that the note could serve as evidence of the parties' intents in entering the transaction. A bench trial ensued at which Angela admitted that she accepted the funds but believed she was not truly required to repay them. She conceded that she prepared the promissory note but explained her assumption that John would retain the document for estate planning purposes. Angela claimed that she sent the amortization schedule upon John's request because he thought he needed it for tax purposes. Angela also testified that she did make monthly payments to John but insisted that this was not required on her part.

Ultimately, the court determined that although the parties did not have a written contract, they had reached an agreement. Looking solely at Angela's actions, the court found that she understood her duty to repay John \$1,000 monthly with a 3% interest rate. Based on John's testimony, the court determined that Angela was only required to make payments when she had the means to do so. As Angela was gainfully employed earning at least \$75,000 annually and owned a home, the court determined that she could meet her obligation to John. Accordingly, based on equitable principles, the court ordered Angela to resume her monthly payments.

Angela now appeals.

II. ANALYSIS

Angela challenges the trial court's judgment in John's favor and contends that the damages award was based on insufficient evidence. "Following a bench trial, we review a trial court's factual findings for clear error and its conclusions of law de novo." *Scholma v Ottawa Co Rd Comm*, 303 Mich App 12, 16; 840 NW2d 186 (2013).

Where a court following a bench trial has determined the issue of damages, we review the award for clear error. We will not set aside a nonjury award merely on the basis of a difference of opinion. Clear error exists where, after a review of the record, the reviewing court is left with a firm and definite

conviction that a mistake has been made. [*Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002) (quotation marks and citations omitted).]

The trial court resolved this case on unjust enrichment grounds. “Unjust enrichment is defined as the unjust retention of money or benefits which in justice and equity belong to another.” *Tkachik v Mandeville*, 487 Mich 38, 47; 790 NW2d 260 (2010). To establish an unjust enrichment claim, the plaintiff must show: “(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Angela received a benefit at John’s expense. The equitable principles at issue are “concerned with the receipt of benefits that yield a measurable increase in the recipient’s wealth.” 1 Restatement Restitution & Unjust Enrichment, 3d, § 1, comment *d*, p 7. John transferred \$77,700 to Angela’s TruNorth Credit Union account. Angela used those funds to pay off a loan with the credit union bearing an interest rate of 5.25%. In exchange, she acquired a new lender who only charged a 3% interest rate.

The question becomes whether it is unjust or inequitable for Angela to retain the benefit without repaying John. Angela contends that John voluntarily conferred the funds without request. The funds were therefore a gift and she need not repay John.

“One is not unjustly enriched . . . by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution.” *Buell v Orion State Bank*, 327 Mich 43, 56; 41 NW2d 472 (1950) (quotation marks and citation omitted). Stated differently, “There is no liability in restitution for an unrequested benefit voluntarily conferred, unless the circumstances of the transaction justify the claimant’s intervention in the absence of contract.” 1 Restatement Restitution & Unjust Enrichment, 3d, § 2(3), p 15. This rule protects a recipient from being ordered to make restitution when the claimant bypasses “proposing a bargain” and “first confers a benefit, then seeks payment for its value.” *Id.*, § 2, comment *d*, p 18.

No restitution is required when the benefit was conferred as a gift. To establish that a transfer was a gift, Angela was required to establish that as the donor, John “possess[ed] the intent to gratuitously pass title to the donee.” *Buell*, 327 Mich at 55 (quotation marks and citation omitted). Second, the donor must actually or constructively deliver the property. Third, the recipient must accept the gift. *Id.* To prove that the transferred funds were not a gift, therefore, John was required to rebut these elements. Most importantly here, John had to establish his intent.

Angela also contends that she should not be required to repay John because she did not ask John to pay off her loan. A defendant may be required to provide restitution for a plaintiff’s “[u]nrequested intervention” under certain circumstances. For example, “the claimant may be justified in paying another’s money debt if there is no prejudice to the obligor in substituting a liability in restitution for the original obligation.” 1 Restatement Restitution & Unjust Enrichment, 3d, § 22(2)(a), p 308. But, “[t]he law does not favor unrequested intervention in the affairs of another, and unsolicited payment of another’s debt has been thought to exemplify the

conduct condemned as officious.” *Id.*, § 22, comment *a*, pp 308-309. In determining whether the defendant should owe the plaintiff, the court must “weigh[] the benefits secured by intervention against the consequences for the defendant of a liability in restitution.” *Id.*, p 309. “When the burden of liability is relatively light—for example, a simple substitution of one creditor for another—the justification of an unrequested intervention may be correspondingly modest.” *Id.*

The trial court did not clearly err in finding that Angela and John intended that Angela would repay him and that the transfer was not a gift. Before John transferred the funds, Angela and John negotiated through her father, Scott Swanberg, as the middleman. It is irrelevant whether John or Angela initiated the conversation or if Scott bullied Angela into accepting the money as she claims. Angela accepted delivery of John’s funds and used them to pay off her credit union loan. Angela could have electronically transferred the funds back to John, but chose not to. Even if John had intermeddled and paid off Angela’s loan without permission, restitution would be warranted under the Restatement. The obligation amount remained the same, but Angela had the benefit of a lower interest rate. The payee simply changed from the credit union to John.

Angela’s acts in the days following the transfer support that the parties intended the transfer to be repayable. Angela prepared a promissory note and sent it to John. Angela defined her monthly payment obligation as \$1,000. Angela declared an interest rate of 3%. Angela then made monthly payments from April 2011 through March 2012, missed her payment in April 2012, and then paid again in May and June. She even asked John if she could make one of her payments late. If she really believed John’s transfer was a gift, it would be illogical to prepare a promissory note (executed or not), make monthly payments, and ask permission to make a tardy installment.

Angela’s reliance on *Ruch v First Nat’l Bank of Three Rivers*, 326 Mich 52; 39 NW2d 240 (1949), is misplaced. In *Ruch*, the plaintiff father, a widower, opened a joint savings account with the defendant daughter. *Id.* at 55. The plaintiff deposited into the account sums paid by third parties on loans that the plaintiff had issued (and had made payable to him and the defendant jointly). *Id.* at 54-55. The plaintiff lived in the defendant’s home for a time and when he moved out in May 1947, the account passbook remained in the defendant’s possession. *Id.* at 57. In August 1947, the plaintiff remarried and his relationship with defendant fell apart. *Id.* at 60. He thereafter emptied the account after pledging that the account passbook was lost or stolen. The defendant verbally complained to the bank, asserting ownership of the funds. The plaintiff filed suit seeking a declaration of ownership. *Id.* at 55.

The Supreme Court held that the trial court properly declared the funds in the account to be a gift to the defendant daughter. In doing so, the Court acknowledged “that a gift from a parent to a child is more easily proved than” in transactions between those of lesser relation. *Id.* at 60. At that time, a person could effectuate the gift of money by giving someone the passbook to the account holding the funds, *id.* at 59, which the defendant claimed the plaintiff did. *Id.* at 57. The plaintiff may have changed his mind when the parent-child relationship soured. “However,” the Court held, “whether the gift was made in May, 1947, must be determined from the evidence and in the light of the situation then existing.” *Id.* at 60.

Angela claims that John only changed his intent from gift to loan because her family relationships crumbled and that *Ruch* defeated John's claim. However, Angela and John were not parent and child so there is no presumption that the transfer was a gift. Angela's own actions evidenced her understanding that the transaction was a loan. Moreover, John did not suddenly switch his intention. The quality of Angela's family relationships had been declining since 2010. Angela failed to pay John in April and July 2012, but John waited until August 2012 to complain. John did not immediately start dunning Angela, despite that she had been fighting with her father for more than five months before her first missed payment.

Angela contends that the court should have considered the nature of John's transfers to her siblings as evidence that he intended to make a gift in this instance. However, the circumstances surrounding the transactions with her brother Craig Swanberg are nearly identical to those that the court found constituted a loan in this case. Just as with Angela, John transferred large sums of money to Craig to pay off a commercial loan, Angela prepared a promissory note to memorialize the transaction, and John expected Craig to repay the loan as long as he had the financial means to do so. The evidence established, however, that Craig did not have the financial means to make payments. And John was not required to file suit against Craig in order to seek recompense against Angela. The law does not require any one to initiate litigation against another to somehow balance the equities. And the circumstances surrounding the transactions with Caralee are completely inapposite. Although Angela prepared a promissory note to memorialize that John paid off her sister's student loan, the witnesses testified that John did not view that particular transaction as a loan and did not request the note. Overall, this evidence did not assist Angela's case.

In relation to the court's order that she repay John, Angela contends that the court relied on insufficient information that she was able to make payments. In a civil case, the plaintiff must prove his claim by a preponderance of the evidence, "the least rigorous" burden of proof. *Reed v Burton*, 475 Mich 531, 540-541; 718 NW2d 770 (2006). "Proof by a preponderance of the evidence requires that the factfinder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross & Blue Shield of Mich v Milliken*, 422 Mich 1, 89; 367 NW2d 1 (1985).

John presented evidence that Angela was gainfully employed as a lawyer, earning somewhere between \$75,000 and \$85,000. The court accepted that she earned at the lowest end of that spectrum. John also presented evidence that Angela leased a vehicle and secured a mortgage to purchase a home. Angela admitted these claims. John thereby presented evidence from which the court could conclude that she had sufficient income and assets to meet her financial obligations. Angela broadly asserted that she had too many other debts to pay John

\$1,000 monthly, but she presented no documentary evidence to rebut John's claim nor did she give any testimony regarding her other debts. With no rebuttal evidence, the court had no grounds to reject John's claim.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ David H. Sawyer

/s/ Michael J. Kelly